

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

APPEAL FROM ORDER No 259 of 1986

with

CIVIL APPLICATION No 1173 of 1987

STATE BANK OF INDIA

Versus

UNIVERSAL PROCESSORS

Appearance:

1. Appeal from Order No. 259 of 1986

MR GN DESAI for Petitioner

MR RR MARSHALL for Respondent No. 1, 4, 5, 6

SERVED BY DS for Respondent No. 3

2. Civil Application No 1173 of 1987

MR GN DESAI for Petitioner

CORAM : MR.JUSTICE D.G.KARIA

Date of Order: 26/09/96

ORAL ORDER

This appeal is directed against the judgment and order dated November 30, 1985 passed by the learned 2nd Joint Civil Judge (S.D.), Bharuch on Exh.5-application in Special Civil Suit No.64 of 1984 whereby the learned Judge dismissed the said application-exh.5.

The State Bank of India, the plaintiff-appellant, instituted Regular Civil Suit No.64/84 in the Court of the Civil Judge (S.D.), Bharuch against the respondents-defendants for recovery of Rs.11,64,452-06 ps. with interest. The respondent No.1 is a partnership firm and respondents No.2 to 7 are the partners

thereof. The respondent No.1 has been carrying on the business of dying and processing of art silk cloth in the name and style of M/s.Universal Processors. The respondents sought several facilities of cash credit factory type pledge limit of Rs.50,000/- for working capital finance and term loan for purchase of the machineries, etc. The respondents executed various deeds and documents including hypothecation of plant and machinery and pledge of raw materials, stock-in-trade for the purpose of raising the aforesaid loan amount. The respondents failed to pay the loan amount as per the agreement and the interest accrued thereon. The plaintiff-appellant has therefore filed the suit.

The plaintiff-appellant also filed application exh.5 in the suit praying for injunction restraining the respondents from interfering with the plaintiff-bank in selling the pledged/hypothecated stock, machineries and other movables and other mortgaged properties described in the schedule attached to the said application exh.5. It is also stated in the application that for last few months, the factory of the respondent No.1 did not operate and the Central Excise Department had issued notices on respondent No.1 claiming excise duties and threatened to take possession of the machineries charged to the Bank. The respondents by their reply Exh.36 denied the allegations and averments made in the application Exh.5.

The learned 2nd Joint Civil Judge (S.D.), Bharuch granted ad interim injunction in terms of paras 6(a), (b), (c) of the application Exh.5 and issued notices to the respondents. However, after hearing the parties, the learned Civil Judge held that there was no evidence that the respondents were trying to dispose of mortgaged properties or the hypothecated properties with a view to defeat the decree that may ultimately be passed in the suit. According to him, there was no prima facie case for obtaining the orders of injunction. Eventually, the learned Judge dismissed the application. It is against this order of dismissal of application Exh.5 that the plaintiff-Bank has approached this Court by way of the present Appeal From Order.

Mr.P.G.Desai, learned Advocate appearing for the

appellant, submits that it was admitted position on record that the factory of respondent No.1 was closed and the Excise Department had already sealed the factory premises. The property was under the charge of the plaintiff-Bank and under the circumstances, the property of the factory was hypothecated and if the pledged stocks, machineries and other moveables are shifted or taken away by or on behalf of the respondents, it will cause grave loss and prejudice to the plaintiff-Bank. According to Mr. Desai, the learned Judge was not justified in rejecting the application Exh.5 in view of the facts and circumstances of the case.

Mr. R.R. Marshal has appeared for the respondents. The interim relief staying the said order under appeal, i.e. restraining the respondents from dealing with the factory property has already been granted at the time of admission of the appeal, in Civil Application No.2009/86. The said order has remained in operation for last about 10 years. Mr. Desai, for the appellant, submits that the suit being for recovery of more than ten lacs of rupees has now been transferred to the Debts Recovery Tribunal, Gujarat State at Ahmedabad and the same is likely to be disposed of in near future. Since the injunction has been operating against the defendant-respondents for last several years and the matter is to be decided within short period, there would not be any difficulty in allowing the appeal. Mr. Marshal has no objection for this. Under the circumstances, without entering into the merits of the appeal, it is ordered that the order passed by this Court staying the impugned order and restraining the respondents from dealing with the suit property in any manner whatsoever is extended till disposal of the proceedings before the Debts Recovery Tribunal.

In the result, the appeal is allowed with no order as to costs. Interim injunction granted by this Court will operate till disposal of the proceedings before the Debts Recovery Tribunal, Gujarat State, Ahmedabad.
